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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ADIDAS AMERICA, INC., a Delaware
corporation,

Plaintiff,

v.

MICHAEL D. CALMESE, a resident of
Arizona,

Defendant.

No. _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff, adidas America, Inc. (hereinafter, "adidas"), hereby sues Defendant Michael D. Calmese (hereinafter, "Calmese") and alleges the following:

NATURE OF THE ACTION

1. This is an action seeking a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that adidas's use of the phrase "prove it" does not constitute trademark infringement under 15 U.S.C. § 1114, nor false designation of origin under 15 U.S.C. § 1125 of Calmese's purported trademark "PROVE IT!". In addition, adidas seeks the cancellation of Trademark Registration Number 2,202,454.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the subject matter of this action. Original jurisdiction for any civil action arising under 15 U.S.C. §§ 1114 or 1125 is conferred on this Court pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a).

3. This Court has *in personam* jurisdiction over Calmese because, on information and belief, Calmese regularly transacts business in the State of Oregon, and he specifically does so with respect to certain goods that are at issue in this matter. Personal jurisdiction over Calmese is therefore proper under Oregon's long-arm statute, ORCP 4L, and it comports with the requirements of due process under the United States Constitution.

4. In addition, Calmese and his counsel sent adidas and its counsel multiple letters dated March 2, 2007; March 30, 2007; May 8, 2007; May 10, 2007; and May 24, 2007 (hereinafter, the "Letters"), as well as a draft Complaint (on both May 21, 2007 and, again, on December 19, 2007), which alleges that adidas is infringing a trademark purportedly owned by Calmese. All of the referenced correspondence from Calmese to adidas was sent into the State of Oregon.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and § 1391(c), because a substantial part of the events giving rise to the claims alleged herein occurred in this judicial district.

THE PARTIES

6. adidas is a Delaware corporation with its principal place of business located at 5055 North Greeley Avenue, Portland, Oregon 97217.

7. Upon information and belief, Calmese is a resident of the State of Arizona having an address at 14666 N. 90th Lane, Peoria, Arizona, 85381.

8. Upon information and belief, Calmese is the owner of United States Trademark Registration No. 2,202,454.

FACTUAL ALLEGATIONS

9. adidas is engaged in the business of designing, developing, manufacturing, marketing and selling athletic and sports equipment, footwear, apparel, and accessories, all of which prominently display one or more of its famous and internationally-recognized, federally-registered trademarks, such as “adidas” and the 3-Bars Logo.

10. Since 1952, the adidas-branded products have been widely advertised, offered for sale, sold and distributed throughout the United States. Thus, the consuming public has come to identify adidas as the source of its athletic products.

11. For its Spring 2007 Season, adidas manufactured and sold a limited quantity of adidas-branded t-shirts bearing the phrase “prove it” above an image of a basketball, football or baseball and its internationally-recognized and federally-registered word adidas®, Reg. No. 1,300,627, and 3-Bars Logo, Reg. No. 2,411,802.

12. adidas used the phrase “prove it” in its ordinary descriptive sense to convey a challenge to athletes to prove themselves on the basketball court, football field or baseball diamond, not to identify the source of the clothing item.

13. Further, adidas used the phrase “prove it” as decoration and ornamentation, and not as an identifier of source of origin of the t-shirts, which is evidenced by the inclusion on each of the t-shirts of adidas’s internationally-famous trademarks as part of the design.

14. Upon information and belief, Calmese's PROVE IT! products are men's and women's shirts, sweatshirts, track suits, hats and golf accessories.

15. Upon information and belief, Calmese's PROVE IT! products are offered for sale throughout the United States via his website, www.proveitsportswear.com.

16. On or about May 21, 2007, Calmese threatened to initiate a lawsuit against adidas based on federal trademark infringement and unfair competition of his PROVE IT! trademark. Calmese's threat of a lawsuit was followed up by a May 24, 2007 letter from Calmese's then-attorney seeking to resolve the matter. adidas, through its counsel, advised Calmese that adidas did not believe it had violated his rights and considered the matter closed.

17. On or about December 19, 2007, after not having heard from Calmese in over six (6) months, adidas and its counsel each received another demand from Calmese, to which he again attached a proposed complaint to be filed against adidas.

18. Calmese claims that he is being damaged as a result of adidas's allegedly unauthorized use of the phrase "prove it" in connection with athletic apparel.

19. The Letters and draft complaint prepared by Calmese, alleging trademark infringement and false designation of origin by adidas, have created for adidas a reasonable apprehension that Calmese will file a lawsuit against adidas.

20. adidas firmly denies that its use of the phrase "prove it" infringes or unfairly competes with Calmese's PROVE IT! mark.

FIRST CAUSE OF ACTION
(Declaratory Judgment of Non-Infringement of Registered Trademark)

21. adidas incorporates paragraphs 1 through 20 inclusive as if set forth verbatim herein.

22. This is an action for a declaratory judgment and further relief against Calmese pursuant to 28 U.S.C. §§ 2201 and 2202.

23. Calmese has alleged, and adidas denies, that adidas's use of the phrase "prove it" in respect of athletic apparel infringes Calmese's federally-registered PROVE IT! trademark.

24. Calmese's allegations of trademark infringement create a reasonable apprehension by adidas that Calmese will file a lawsuit against adidas asserting claims for trademark infringement under 15 U.S.C. § 1114.

25. The Letters and draft Complaint prepared by Calmese and forwarded to adidas create an actual controversy regarding the right of adidas to use the phrase "prove it" as ornamentation in connection with its products.

26. Calmese's allegations of false designation of origin and unfair competition adversely affect adidas and will continue to adversely affect adidas because, until the Court makes a determination of adidas's rights, adidas will be in doubt as to its right to continue to use the phrase "prove it" as part of its athletic wear designs.

SECOND CAUSE OF ACTION
(Declaratory Judgment of Non-False Designation of Origin)

27. adidas incorporates paragraphs 1 through 20 inclusive as if set forth verbatim herein.

28. This is an action for a declaratory judgment and further relief against Calmese pursuant to 28 U.S.C. §§ 2201 and 2202.

29. Calmese has alleged, and adidas denies, that adidas's use of the phrase "prove it" in respect of athletic apparel constitutes false designation of origin, sponsorship and/or affiliation and unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125 (a).

30. Calmese's allegations of false designation of origin create a reasonable apprehension by adidas that Calmese will file a lawsuit against adidas asserting claims for false designation of origin and unfair competition under 15 U.S.C. § 1125 (a).

31. The Letters and draft Complaint prepared by Calmese and forwarded to adidas create an actual controversy regarding the right of adidas to use the phrase "prove it" as ornamentation in connection with its products.

32. Calmese's allegations of false designation of origin and unfair competition adversely affect adidas and will continue to adversely affect adidas because, until the Court makes a determination of adidas's rights, adidas will be in doubt as to its right to continue to use the phrase "prove it" as part of its athletic wear designs.

THIRD CAUSE OF ACTION
(Cancellation of Trademark Registration Pursuant to 15 U.S.C. § 1119)

33. adidas incorporates paragraphs 1 through 20 inclusive as if set forth verbatim herein.

34. Upon information and belief, Calmese submitted specimens to the United States Patent and Trademark Office on September 6, 2006, alleging continuous use of the PROVE IT! mark.

35. Upon information and belief, the specimens submitted by Calmese were date-stamped "MAY 18, 1998."

36. Upon information and belief, the specimens submitted by Calmese do not show current use of the mark in connection with the goods identified in Trademark Registration No. 2,202,454, in violation of 15 U.S.C. § 1058.

37. Upon information and belief, Calmese is not offering certain goods identified in the registration, namely "underwear" and/or "men's and women's shorts," for sale in connection with the PROVE IT! mark.

38. Upon information and belief, Calmese knowingly made verified statements alleging continuous use of the PROVE IT! mark at the time of filing his Section 8 and 15 Affidavits and in support of registration of the PROVE IT! mark which were false. In so doing,

Calmese committed fraud on the United States Patent and Trademark Office so that the resulting registration, i.e., Registration No. 2,202,454, should be cancelled.

39. Upon information and belief, Calmese knew or should have known that such misrepresentations of fact identified herein were false and/or misleading.

40. Upon information and belief, Calmese has committed fraud in procuring Registration No. 2,202,454 for PROVE IT!, thus making Calmese's registration of PROVE IT! void *ab initio*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, adidas America, Inc., prays for entry of a declaratory judgment against Defendant, Michael D. Calmese, as follows:

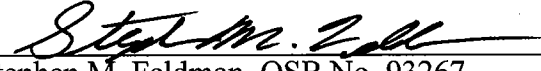
1. That the Court enter judgment declaring that adidas's use of the phrase "prove it" does not constitute trademark infringement under 15 U.S.C. § 1114;
2. That the Court enter judgment declaring that adidas's use of the phrase "prove it" does not constitute false designation of origin and unfair competition under 15 U.S.C. § 1125(a);
3. That the Court enter judgment declaring that Registration No. 2,202,454 shall be cancelled and removed from the Principal Register;
4. That Calmese be ordered to pay to adidas an award covering adidas's attorneys' fees, costs, and other expenses incurred as a result of this controversy; and

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5. That this Court grant such further and other relief as the Court deems just and proper.

DATED: January 18, 2008

PERKINS COIE LLP

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